IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

RYAN TRANSPORTATION SERVICES, INC.,	
Plaintiff,	**CIVIL ACTION**
v.	**No. 04-2445-CM**
FLEET LOGISTICS. L.L.C., et al.,	
Defendants.	
FINANCIAL SERVICES OF AMERICA, L.L.C. and INTERMODAL DIRECT EXPRESS EQUIPMENT CORP.,	
Third Party Plaintiffs, Counter Claimants, and Cross Claimants,	
v.	
JOHN WILLIAMS, et al.,	
Third Party Defendants,	
RYAN TRANSPORTATION SERVICES, INC.,	
Counter Defendant,	
and	
FLEET LOGISTICS, L.L.C., et al.,	
Cross Defendants.	

FINANCIAL SERVICES OF AMERICA, L.L.C.,

Plaintiff,

v.

No. 04-2497-CM

EGL - EAGLE GLOBAL LOGISTICS, L.P., et al.,

Defendants.

EGL - EAGLE GLOBAL LOGISTICS, L.P.,

Cross Claimant,

v.

JOHN J. WILLIAMS, et al.,

Cross Defendants.

FINANCIAL SERVICES OF AMERICA, L.L.C.,

Plaintiff,

v.

No. 04-2508-CM

COMPREHENSIVE LOGISTICS CO., INC., et al.,

Defendants.

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MEMORANDUM AND ORDER

This matter comes before the court on defendant and counter claimant, cross claimant and third party plaintiff Financial Services of America, L.L.C.'s ("FSA") Motion to Consolidate Case Nos. 04-2445, 04-2497 and 04-2508 (Doc. 7 in Case No. 04-2445), and FSA's separate but identical Motions to Consolidate the three cases filed in Case No. 04-2497 (Doc. 9) and 04-2508 (Doc. 59).[1] FSA brings its motions pursuant to Fed. R. Civ. P. 42(a). Plaintiff in Case No. 04-2445, Ryan Transportation Services, Inc., ("RTS") is the only party in the three lawsuits that has opposed FSA's requested consolidation. For the reasons set forth more fully below, the court grants FSA's Motions to Consolidate the three cases for discovery and trial.

I. Facts

On or about April 23, 2002, RTS entered into a factoring agreement with defendant Fleet Logistics, L.L.C. ("Fleet"), whereby RTS agreed to factor certain loads hauled by Fleet. RTS purchased bills of lading from Fleet and collected money due and owing from shippers. The factoring agreement between RTS and Fleet was terminated in May 2004. Pursuant to the factoring agreement, RTS continued to collect money on bills of lading it had factored from various shippers who were Fleet's clients. During the termination, RTS acquired a surplus of payments and established a "reserve account," which contains funds paid to RTS from various sources in relation to transportation services provided by Fleet and/or defendant Intermodal Direct Express Equipment Corp. ("IDEE"). It is alleged that RTS actually received such

[1] FSA is the plaintiff in Case Nos. 04-2497 and 04-2508.

payments in excess of the amount of the fund which is the subject of RTS's interpleader action. Several of the parties to the three cases have made or are expected to make claims upon the fund, and upon RTS and/or other parties directly for payment. In the counter claims, cross claims and third party petitions, FSA and IDEE allege that various parties have money to which they are entitled.

On or about April 27, 2004, third-party defendant John J. Williams, Jr. and IDEE entered into certain agreements pursuant to which Williams sold to IDEE all of Williams's 100% ownership interest in Fleet, and Williams entered into a consulting contract with IDEE.

On or about April 29, 2004, Fleet entered into an agreement with IDEE pursuant to which IDEE leased from Fleet a portion of Fleet's equipment for a period of one year, and IDEE agreed to provide services to certain of Fleet's customers for a period of one year, beginning April 28, 2004.

In early May, 2004, Fleet and IDEE jointly notified the Fleet customers that IDEE was providing the customers' transportation services, effective April 28, 2004, and that payment for services rendered from that date forward should be made to IDEE. Invoices that had been issued by Fleet for services after April 28, 2004 were revised to indicate that the services had been provided by IDEE and that payment on the invoices for services after April 28, 2004 should be sent to IDEE.

IDEE and FSA allege that payment for any services provided by IDEE to Fleet's customers after April 28, 2004, should have been made to IDEE or its designate. They also allege that an unknown amount has instead been paid to RTS, Fleet, and/or other parties to these cases.

On or about May 13, 2004, FSA entered into a factoring agreement with IDEE, whereby

FSA agreed to factor certain loads hauled by IDEE. Pursuant to the terms of the factoring agreement, FSA advanced funds to IDEE on invoices for services provided by IDEE, including services provided to Fleet's customers, for a period beginning May 7, 2004 and ending June 18, 2004.

Subsequent to FSA becoming the factor for IDEE, invoices for services provided to Fleet's customers by IDEE indicated that payment should be made directly to FSA. FSA, in investigating these matters, has learned that various customers have made payment to RTS, Fleet and/or third-party defendant Glenn National Carriers, Inc. ("Glenn National") on invoices for services that had been financed by FSA between May 7 and June 13.

On or about June 8, 2004, Williams and IDEE rescinded the agreements pursuant to which Williams had sold his 100% ownership interest in Fleet to IDEE and had become a consultant to IDEE. The April 29, 2004 agreement between Fleet and IDEE was not rescinded.

On or about June 16, 2004, Williams wrote to Fleet's customers, including customers whose service had been provided by IDEE, and directed those customers to make payment on invoices dated between April 28, 2004 through June 7, 2004 directly to Fleet. With his notice of June 16, 2004, Williams specifically requested those customers to discard the previous invoices which directed that payment be made to FSA. With his notice of June 16, 2004, Williams further directed Fleet customers to make payment on invoices dated after June 8, 2004, to Glenn National.

Upon learning of Mr. Williams's June 16, 2004, correspondence to the account debtors, FSA and IDEE both wrote to the same customers in an attempt to countermand Mr. Williams's instructions. Each account debtor chose its own course of action in response to these letters. Some account debtors paid one

or more of the various entities while some refused to pay any entity, choosing instead to wait for a decision from the court as to which entity is properly entitled to receive payment.

On July 9, 2004, RTS filed an interpleader action in the District Court of Johnson County, Kansas, against Fleet, TDR Financial L.L.C., Regional Motors, L.L.C., IDEE, FSA, and the Internal Revenue Service. In its petition, RTS alleged that each of the defendants had made claims on the funds in RTS's possession and that, as a result, RTS could be exposed to double or multiple liability. RTS requested that the court take possession of the funds in the reserve account, hold them for distribution to the defendants, based on the court's determination of the underlying claims, and discharge RTS from any liability to the defendants. The IRS removed the case to this court on September 8, 2004 (Case No. 04-2445).

On October 8, 2004, FSA filed its collection action against EGL Eagle Global Logistics, L.P. ("Eagle") (Case No. 04-2497). On February 9, 2005, FSA amended its complaint to add Williams, Fleet, RTS and Glenn National as defendants. On February 28, 2005, Eagle filed its answer to FSA's complaint and made cross claims against Williams, Fleet, RTS and Glenn National.

On October 12, 2004, FSA filed its collection action against Comprehensive Logistics Co., Inc. ("Comprehensive") (Case No. 04-2508). On March 29, 2005, FSA amended its complaint to add Delphi Automotive Systems, L.L.C., Williams, Fleet, RTS, and Glenn National as defendants.

II. Standard

Federal Rule of Civil Procedure 42(a) authorizes courts to consolidate actions "involving a common question of law or fact." The decision whether to consolidate such actions lies within the sound discretion of the trial court. *Johnson v. Unified Gov't of Wyandotte County*, 1999 WL 1096038, at *1 (D. Kan. Nov. 16, 1999) (citing *Shump v. Balka*, 574 F.2d 1341, 1344 (10th Cir. 1978)). In considering a motion

to consolidate, a district court should examine whether judicial efficiency is best served by consolidation. *Id*. (citing *Fields v. Atchison, Topeka & Santa Fe Ry. Co.*, 1996 WL 109536 at *1 (D. Kan. Feb. 7, 1996)).

III. Analysis

FSA contends that the three cases have common questions of law and fact, and the various claims and defenses asserted by the parties arise out of the same series of transactions and occurrences. Specifically, FSA contends that all of the issues in this case arise out of the relationships between and among Fleet, IDEE, the factors, and the account debtors. RTS asserts that it has been paid all that it is owed, that it has a fund left over, and has requested that the court discharge RTS from any liability to the defendants in its case and determine to whom the funds should be distributed. FSA has not been paid, and it seeks recovery of the funds it advanced, either from the account debtors or from the entities that received payment on invoices factored by FSA. FSA asserts that RTS received payments rightfully belonging to FSA. FSA contends that the evidence also supports FSA's assertion that Glenn National and Fleet received payments on invoices factored by FSA. FSA also contends that it is entitled to receive payment directly from the account debtors. The account debtors assert that they have paid for the services and that they cannot be compelled to pay twice.

FSA contends that a common issue of law, among others, will be the sufficiency of the notice of assignment provided by IDEE and FSA to the account debtors. FSA believes that resolution of this legal issue likely will determine whether certain parties must pay FSA, but may also determine the extent to which one or more parties may be entitled to money in the RTS fund. FSA further contends that a practical matter of judicial and party economy will also be served by consolidating these cases. Specifically, the account debtors are exposed to the potential of having to pay twice for transportation services should it be

determined that FSA is entitled to payment on invoices that have already been paid to some other party. Thus, it is foreseeable that the account debtors may seek recovery from the entity to which they have made those payments. FSA thus contends that judicial and party economy demand that such claims be made in a consolidated case, in which all parties are before the court and in which full and complete relief can be apportioned across the various competing interests arising out of the common facts.

RTS contends that FSA's request should be denied because the three cases do not have common questions of law and fact, FSA has failed to establish that including the two collection lawsuits with RTS's case would promote trial convenience and economy, and FSA has failed to demonstrate that it would suffer any injury if consolidation is denied. RTS contends that the parties to the actions are not the same, and that the factoring agreements, business sales, UCC-1 filings and tax lien appear to be of no consequence to FSA's collection claims.

The court disagrees with RTS. It appears that the claims in each of the three lawsuits arise from common issues of fact, and that the manner in which payments were made to various parties pursuant to the factoring agreements and the reconciliation of to whom the appropriate payments should have been made are intertwined. Moreover, since the briefing on the pending motions to consolidate, Williams, Fleet, RTS, and Glenn National have all been added as defendants and/or cross-defendants in the two actions brought by FSA. Accordingly, the court, based on the facts currently available, finds that there is commonality of parties across all three lawsuits and common issues of fact that arise out of the same series of events related to the various business transactions with Fleet. While some of the claims and legal theories being argued vary from party to party, ultimately, the claims are intertwined and center on: (1) what parties are entitled to the funds in the RTS account; (2) to whom the account debtors owe payment for shipping services; and (3)

whether the account debtors have already made such payments. As a result, the court, in its discretion, finds that judicial economy would be served by consolidating the three cases.

IT IS THEREFORE ORDERED that FSA's Motions to Consolidate Case Nos. 04-2445, 04-2497 and 04-2508 (Doc. 7 in Case No. 04-2445, Doc. 9 in Case No. 04-2497, and Doc. 59 in Case No. 04-2508) are granted. The three above-captioned cases are hereby consolidated for discovery purposes and trial.

IT IS FURTHER ORDERED that Comprehensive's Second Motion for Extension of Time to File Response as to Motion to Consolidate Cases (Doc. 10 in Case No. 04-2508) is denied.[2]

Dated this 19th day of September 2005, at Kansas City, Kansas.

s/ Carlos Murguia
CARLOS MURGUIA
United States District Judge

[2] Comprehensive has a pending motion to dismiss before the court and had requested that, in the event the court does not grant its motion to dismiss, the court allow it additional time in which to respond to the motion to consolidate. Because of the court's finding that judicial efficiency is best served by consolidating the three cases, the court overrules Comprehensive's motion.